

# EXHIBIT F

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
07 CIV. 9385 (JFK)

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SAMSARA INVESTMENT III, LLC,

Plaintiff,

vs.

JERRY L. WALLACE,

Defendant.

-----x

May 12, 2008

8:20 a.m.

Deposition of Jerry L. Wallace,  
held at the offices of Haynes & Boone, LLP,  
153 East 53rd Street, New York, New York,  
pursuant to Court Order, before Francine  
Sky, a Notary Public of the State of New  
York.

1 Jerry L. Wallace

2 project.

3 Q. When did you buy his interest out?

4 A. 2006.

5 Q. Do you recall how much you paid  
6 Mr. Heath for that?

7 A. I didn't actually pay him a fee. I  
8 really believe that he was paid through the  
9 price of the land, because he was involved in  
10 the land itself, and I believe that's the way  
11 he was paid.

12 Now, as far as getting a loan for  
13 this, I paid him a very handsome fee for  
14 setting up the loan with the construction loan  
15 that we had set up for the land purchase.

16 Q. Who was that loan with?

17 A. That was with Kennedy Funding.

18 Q. How much did you pay Mr. Heath for  
19 that?

20 A. 5 percent.

21 Q. Did you have a written agreement  
22 with him for that?

23 A. I'm fairly sure that we do.

24 Q. Did he get 5 percent of the loan?

25 A. He got 5 percent of the loan.

225

Jerry L. Wallace

A F T E R N O O N S E S S I O N

(Time noted: 2:08 p.m.)

J E R R Y L. W A L L A C E, resumed  
and testified as follows:

EXAMINATION (Cont'd.)

BY MR. PRESSMENT:

MR. PRESSMENT: Back on the  
record.

Q. Mr. Wallace, we're returning from a  
break. During the break did you have occasion  
to review Exhibit 17, which was your Principal  
Guaranty?

A. I did.

Q. Are you able to identify any  
provision in the Principal Guaranty, Exhibit  
17, that was not in the version sent to you by  
Jason Simon under cover of Exhibit 13 of your  
deposition here today --

A. No.

Q. -- for your execution?

A. No.

Q. So to your knowledge, the document

1 Jerry L. Wallace

2 you signed was the document that was forwarded  
3 to you by counsel; correct?

4 A. Correct.

5 Q. And you signed that willingly;  
6 correct?

7 A. Yes.

8 Q. And agreed to be bound by its  
9 provisions; correct?

10 A. Yes.

11 Q. And following the execution of the  
12 Agreement and in connection with that, Samsara  
13 invested \$6 million in Shores of Paradise;  
14 correct?

15 A. Correct.

16 Q. And for that investment, it was to  
17 be entitled to a guaranteed return in  
18 accordance with the terms of the Operating  
19 Agreement; correct?

20 A. Correct.

21 Q. And you agreed to those terms;  
22 correct?

23 A. Correct.

24 Q. And that is the Operating Agreement  
25 that you signed and which is part of your

1 Jerry L. Wallace

2 deposition as Exhibit No. 15; correct?

3 A. Yes.

4 Q. Mr. Wallace, following the  
5 execution of the Amended Operating Agreement,  
6 what, if any, activities did you conduct in  
7 connection with the Shores of Paradise  
8 property?

9 A. We -- let me think here. We had  
10 the sales there prior to Katrina.

11 Is this before or after Katrina,  
12 please, somebody tell me?

13 Q. It's after.

14 A. After Katrina, okay. Actually, we  
15 had to wait to find out about the market and  
16 about the bank that we were going to get a  
17 construction loan with. This was only a land  
18 loan.

19 And we had, if I'm not mistaken, we  
20 had American National Bank, I think, was the  
21 construction lender, I think, and we were  
22 waiting to see what was going to happen after  
23 the aftermath of Katrina to determine what to  
24 do. We just cannot know what to do.

25 And that took time, so there really

1 Jerry L. Wallace

2 ahead and closed, because we would have lost  
3 it.

4 Q. Did you follow up to seek any  
5 construction finance upon closing on the land?

6 A. We already had construction  
7 financing. We already had it set up with, if  
8 I'm not mistaken, according to Edward Heath, I  
9 think it was -- American National Bank was  
10 prepared to do that, but they were stalling,  
11 waiting on seeing what the market was going to  
12 do.

13 So we really couldn't do anything  
14 until the bank decided what they were going to  
15 do. Because we did have sales.

16 Q. When you say "the bank," are you  
17 talking about Kennedy Funding?

18 A. No, we are talking about  
19 construction funding. Kennedy Funding was  
20 land loan, so was Samsara.

21 Q. And so with respect to the bank,  
22 what bank are you referring to?

23 A. I think First National Bank --  
24 American National Bank, if I'm not mistaken.

25 Q. At what point did you start taking

1 Jerry L. Wallace

2 Heath was.

3 Q. Did you ever get access to funds to  
4 commence construction of Shores of Paradise?

5 A. No.

6 Q. So how would you summarize your  
7 activities with respect to the project over  
8 that year? Between February 23, 2006, when  
9 you signed the Samsara agreements, through the  
10 end of the year, December 31, 2006, what, if  
11 any, activities did you conduct with respect  
12 to the Shores of Paradise project?

13 A. We talked to customers. I talked  
14 to Kennedy Funding about it, because they  
15 didn't know what was going to happen and  
16 wanted to know.

17 I also made payments during that  
18 time at \$120,000 a month.

19 Q. To...?

20 A. To Kennedy Funding. And we,  
21 basically, had to figure out what the banks  
22 wanted to do about going forward, and this is  
23 -- not in those times, it was really like  
24 pulling teeth to get decisions out of anybody,  
25 because nobody knew what to do, really.



1 Jerry L. Wallace

2 assets but I had no cash.

3 Then I paid the rest of the cash I  
4 had to Kennedy during that year, that's  
5 whenever I had to call -- when I gave out of  
6 cash, that's when I had to call and holler for  
7 help.

8 Q. When was that, approximately?

9 A. I'm guessing probably around  
10 September of this past year.

11 Q. September 2007?

12 A. Yeah. Something like that.

13 Q. When you say call out for help,  
14 what do you mean by that?

15 A. I can't make any more payments.  
16 That means call Sachin and told him that  
17 somebody's gotta make the payments. I can't  
18 make it anymore.

19 Q. That's December 2007?

20 A. I'm guessing at that. I think so.

21 Q. And to your recollection that was  
22 the first time you contacted Mr. Shah about  
23 stepping in to make payments with respect to  
24 Shores of Paradise?

25 A. Yes.

1 Jerry L. Wallace

2 record.

3 (Plaintiff's Exhibit 28, Two-page  
4 document Bates stamped SAM 3765 through  
5 3766, marked for identification.)

6 Q. Mr. Wallace, I'm handing you what  
7 has been marked as Exhibit 28 for this  
8 deposition. It's a two-page document Bates  
9 marked SAM 3765 through 3766.

10 I want to direct your attention  
11 first to the e-mail from you, Jerry Wallace,  
12 to Sachin Shah, at the bottom of the page,  
13 continuing to Page 2, dated May 18, 2007. If  
14 you turn the page you'll see the date. The  
15 subject of that e-mail is "payoff," and you  
16 write: "Would your group take \$9 million if  
17 paid off in full by July 1st?"

18 Do you see that?

19 A. A-ha.

20 Q. Do you recall writing that to  
21 Mr. Shah?

22 A. Yeah, I think so.

23 Q. Mr. Wallace, was it your  
24 understanding as of this date, May 2007, that  
25 in connection with this transaction, Samsara

1 Jerry L. Wallace

2 made an initial investment of \$6 million,  
3 which, pursuant to the Operating and  
4 Investment Agreements and the Guaranty, they  
5 were to get a return of 10.2 million by  
6 February 26, 2007?

7 A. Yes.

8 Q. That was your understanding as to  
9 the agreement?

10 A. Yes.

11 Q. Is that your understanding today as  
12 to the agreement?

13 A. Yes.

14 Q. And Samsara made that \$6 million;  
15 correct?

16 A. They did what?

17 Q. They made that investment of \$6  
18 million; correct?

19 A. Yes.

20 Q. And it is your understanding, and  
21 you would agree with me, that pursuant to the  
22 terms of your agreement with Samsara, Samsara  
23 is entitled to a return of \$10.2 million on  
24 that initial investment plus interest;  
25 correct?

Jerry L. Wallace

A. Yes.

Q. And Samsara hasn't been paid a dime towards that \$10.2 million plus interest that they're owed; correct?

A. That's correct.

Q. And you do not contest the fact that Samsara is owed that money; correct?

A. No.

Q. The only thing you contend is that you may not have the funds to be able to pay them back; correct?

A. That's a fact.

Q. But that's the only thing. You don't contest the fact that Samsara is owed that money; correct?

A. I don't contest that they're owed the money.

Q. And with respect to your role as Managing Member of Shores of Paradise, we established that continued until at least July or August of 2007; correct?

A. That's correct.

Q. And actually, it continued past that, didn't it?

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C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, FRANCINE SKY, a Shorthand  
Reporter and Notary Public within and for  
the State of New York, do hereby certify:

That JERRY L. WALLACE, the witness  
whose deposition is hereinbefore set forth,  
was duly sworn by me and that such  
deposition is a true record of the  
testimony given by the witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no  
way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 23rd day of May, 2008.



FRANCINE SKY